IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.391 OF 2005
WITH
CIVIL APPLICATION NO.492 OF 2006
IN
APPEAL FROM ORDER NO.391 OF 2005
WITH
CIVIL APPLICATION NO.627 OF 2005
IN
APPEAL FROM ORDER NO.391 OF 2005

Shri Roopchand Harbansram ..Petitioner/
Appellant
(Orig.Defendant no.2)

V/s.

1.Smt.Leela Devnath Singh
And
2.Bombay Municipal Corporation ..Respondents
(Orig.Plaintiff &
Defendant no.1)

Ms.Nadia Bhatia i/b Mr.P.S.Gidwani for the appellant

Mr.Bhavesh Parmar and Vijaya Jagtap for respondent no.1

Ms.Geeta Joglekar for B.M.C.

CORAM : A.M.KHANWILKAR, J
DATED : 15TH JUNE, 2006

P.C.:

1. Heard counsel for the parties. Perused the record. By consent, the appeal is taken up for

hearing forthwith.

2. The proceedings before this court have been brought by the occupant of the suit structure, defendant no.2. The defendant no.2 applied for permission to the Corporation for carrying out repairs to the suit structure. That permission was granted by the competent officer in 2002. Later on, another permission came to be granted by the competent officer on 19.3.04. This time, however, besides permitting the appellant, defendant no.2 to carry out tenantable repairs, in clause no.9, the authority provided as under:

> "That the permission is as per the terms and conditions of the Indemnity Bond submitted by you on Stamp Paper i.e.
>
> i) "I hereby undertake that the mezzanine floor (75% of floor area) so constructed will be made accessible internally only and will not be sublet to any tenant. In that event, the same will be demolished".
>
> ii) "I am fully aware of the fact that the photograph will be issued for Ground floor only".
>
> iii) If it is found that the documents / information given by you are false/fabricated this permission stands revoked and necessary action will be initiated against you at our risk and cost.

iv) That the structure should not be amalgamated with the adjoining structures.

v) "That I will give the peaceful possession of the land for the road widening programme of M.C.G.M. if any in future.

3. The respondents (Original Plaintiffs) approached the City Civil Court by way of L.C.Suit No.2276 of 2004 praying for the following reliefs:

a) By an order of the Hon'ble Court a declaration that the letter dated 19.3.04 issued by the defendant no.1 to defendant no.2 is bad and illegal under law and therefore the same be recalled and/or not acted upon until further orders.

b) By an order of the Hon'ble Court the defendants, their Agents, representatives, employees be restrained from carrying out any structural changes to be structure of the defendant no.2 as specifically mentioned in the title to the suit in furtherance of the repair permission granted by the defendant no.1 vide its letter date 19/3/04.

c) For ad interim/interim relief in terms of prayer clause (a) to (b) above.

(d) For costs of this suit and

e) For such further and other orders as this Honourable Court may deem fit and proper in the circumstances of the case and render justice.

4. During the pendency of the said suit, respondents (original plaintiffs took out Notice of Motion No. 1830 of 2004. The reliefs are as under:

> "(a) By an order of the Hon'ble Court a declaration that the letter dated 19.3.04 issued by the defendant no.1 to defendant no.2 is bad and illegal under law and therefore the same be recalled and/or not acted upon until further orders.
>
> (b) By an order of the Hon'ble Court the Defendants, their Agents, representatives, employees be restraining from carrying out any structural changes to the structure of the Defendant no.2 as specifically mentioned in the title to the suit in furtherance of the repair permission granted by the defendant no.1 vide its letter dated 19.3.2004.
>
> (c) Pending the hearing and final disposal of the suit interim and ad-interim reliefs in terms of prayers (a) and (b) above.
>
> (d) Any other and further reliefs as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case.
>
> (e) For the cost this Notice of Motion be."

5. The trial court by the impugned judgment and order dt.30.6.2004 made the notice of motion absolute in terms of prayer clause (b). The Trial Court has found that permission granted to the

defendant no.2 for constructing mezzanine floor on certain condition was inappropriate as new structure was likely to be constructed on the basis of such permission. Accordingly, notice of motion came to be made absolute in terms of prayer clause (b). This order has not been challenged by the defendant no.2.

6. However, subsequently, defendant no.2 took out application before the Trial Court for permission to carry out repairs to the suit structure. That Notice of Motion being notice of motion no.3713 of 2004 has been dismissed by order dt. 16.12.04. The court has observed that there is no reason to modify the order which was passed by the court on the earlier occasion. This order is the subject matter of challenge in the present appeal.

7. In substance, the main controversy between the parties is regarding the permission to erect mezzanine floor in the suit structure. After hearing the parties at length, it was indicated to the parties that the main proceedings before the

Trial Court will stand disposed of if this limited controversy is resolved. Accordingly, the counsel for the appellant (Original defendant no.2), took instruction of the appellant who is present in court and submitted that the appellant will carry out only tenantable repairs as mentioned in permission dt.19.3.04. In other words, the appellant will not insist for carrying out any work with regard to mezzanine floor in any manner in terms of clause 9 of the permission granted by the authority. In view of this statement, the counsel for the original plaintiff submits that he will not insist upon technical grounds available for opposing this appeal. The respondent (original plaintiff) has no objection if the Appellant (Defendant no.2) is allowed to carry out tenantable repairs strictly in accordance with the permission dated 19.3.04 except clause 9 thereof. If this offer is accepted by the appellant, nothing will survive for consideration in the pending suit. The appellant reiterates that this offer is acceptable to him. The appellant undertakes that no work will be carried out with regard to mezzanine floor in any way. That assurance is accepted.

8. As per the permission granted by the competent officer, the proposed repairs were to be carried out within 60 days from the issuance of permission. That period has expired long back. Since the appellants intends to carry out tenantable repairs, he may do so strictly in conformity with the conditions specified in permission dt.19.3.04 (except clause 9). In the event the repair work undertaken by the appellant is noted to be inconsistent with the terms and conditions, it will be open to the corporation to take appropriate action against the suit structure as may be permissible in law.

9. Appeal is disposed of on the above terms. In view thereof, Civil Applications do not survive. The same are also disposed of accordingly.

10. Counsel for the respondent original plaintiff assures to take steps to withdraw the suit in view of the understanding reached as recorded earlier. It is made clear that the appellant, before commencing the tenantable repairs

will give letter of intimation to the ward officer in advance.